WONG SANG GIAP & ORS

v.

WONG KENG GIAP & ORS

HIGH COURT MALAYA, KOTA BHARU
IDRIS YUSOFF J
[CIVIL SUIT NO: 22-87-1992]
17 JANUARY 1999

PARTNERSHIP: *Partnership property - Death of partner - Whether lands registered in joint names of partners were partnership property - Intention of the partners - Consideration of ss. 22(1), 23, 24 & 26 Partnership Act 1961 and s. 343(1)(a) National Land Code 1965*

TRUSTS: *Trustees - Partnership - Death of partner - Lands registered in joint names of partners - Whether lands to be held on trust for beneficiaries of deceased's estate*

EVIDENCE: *Documentary evidence - Trading account - Whether a public document - Whether admissible - Evidence Act 1950, ss. 74, 76, 77 - Relevant evidence - Section 32(1)(b)*

Yuen Hing Rubber Plantation Company ('the company') was registered as a partnership on 23 July 1959 comprising three persons, namely the deceased, the deceased's late wife ('Mah') and the administrator ('the 1st defendant'). There was no written partnership agreement and no partnership property was shown in the registration form. The joint registration of the three names in the land titles was made on 11 August 1962 without specific proportions. Grant of letters of administration for the estate of the deceased were issued to Mah and the 1st defendant but certain properties were not included. In March 1981, the inquiry officer held a series of enquiries and made certain orders concerning the deceased's 1/3 share in the properties.

The plaintiffs applied for declarations that: (i) the deceased owned 58/70 shares in the company; (ii) all shares in the assets and properties yet to be divided and which had been registered in the joint names of the deceased, Mah and the 1st defendant were held on trust for the company; (iii) the 1st defendant was to file a corrective affidavit to include certain undivided shares in three immovable properties into the estate of the deceased; and (iv) orders for distribution of listed properties under the Kelantan Land Settlement Ordinance 1955 ('the Ordinance') be rendered null and void and the said properties be returned to and registered in the names of the deceased, Mah and the 1st defendant jointly.

At the hearing, the parties relied wholly on agreed documentary evidence and statements of agreed facts. Of the documents, all were agreed upon save for a tax statement in the plaintiffs' bundle for the year ending 31 December 1962 signed by the deceased ('the trading account'). It was the plaintiffs' submission that although the properties were registered jointly in three names, the deceased's contribution to the purchase price was the highest at $58,000 with Mah contributing $8,000 and the 1st defendant only $4,000. This was supported by the trading account. Thus, the plaintiffs argued that the deceased's share in the properties ought to be 58/70, Mah 8/70 and the 1st defendant 4/70. The plaintiffs further submitted that under s. 22 of the Partnership Act 1961 ('the PA') and the terms of the letters of administration, where the properties were declared to be the assets of the company, the lands ought to be regarded as partnership property and as personal rather than real estate. Thus, under s. 22(1) of the PA, upon the death of the deceased and Mah, the legal estate rightfully devolved upon the surviving partner, the 1st defendant, but subject to the equitable rights of the deceased's legal representatives. As for the trading account, the plaintiffs relied strongly on the document claiming that it was a public document within the meaning of s. 74 of the Evidence Act 1950 ('the EA') and therefore relevant and admissible under s. 32(1)(b) of the same.

The 1st defendant claimed entitlement to undivided equal shares in the properties relying on the fact of the registration in joint names and on s. 343(1)(a) of the National Land Code 1965 ('the NLC'). The main issue was whether the properties concerned were partnership property.

Held:

[1] Whether or not a property is partnership property depends on the intention of the partners which has to be determined in each individual case. The fact that a property is used by all the partners for partnership purposes need not necessarily qualify it to be termed partnership property even though the partnership may be debited with the outgoings and expenses of the property unless there is evidence to show such an intention.

[2a] Section 74 of the EA is not concerned with relevancy or admissibility – that question has to be decided with reference to other provisions of the EA. Being categorised as a public document will, no doubt, facilitate its admissibility as evidence after complying with certain prerequisites.

[2b] Section 77 of the EA authorises the production of copies of a public document in proof of the contents or parts of the contents of the document, on it being so certified in the manner set out in s. 76 of the

same. The trading account, no doubt, showed certain facts and figures but without any certificates or signatures as required by s. 76 of the EA, it was not admissible.

[2c] While the statements in the trading account were made by a deceased person, there was no evidence to show that they were made in the ordinary course of business or were parts of an entry in a memorandum or book kept in the ordinary course of business as to satisfy the requirements of s. 32(1)(b) of the EA. Since the trading account was held inadmissible, there was insufficient evidence to support or suggest that the lands were "partnership property".

[3] From the grant of letters of administration, there was included as asset "1/3 share in Yuen Hing Rubber Plantation Co as per Schedule A". The inference to be drawn from it was that the petitioners acknowledged the lands belonged to the company and hence it could be treated as "partnership property" but to the extent of 1/3 share only. This was especially so when there was no partnership agreement ever executed between the three partners and having regard to s. 26 of the PA.

[4] Although the lands were vested in the 1st defendant, in law he held them in trust for the estate of the deceased in whatever proportions due to the latter. In effect that was what actually happened – a 1/3 share in the lands being treated as the deceased's asset. The said 1/3 share had been properly and legally distributed to the rightful beneficiaries.

[Plaintiffs' suit dismissed with costs.]

Case(s) referred to:

Abdul Majeed v. Official Administrator [1939] MLJ 267 ***(foll)***
Ashworth v. Munn [1880] 15 Ch D 363 ***(refd)***
Devraj Nahar & Anor v. Gian Singh [1963] MLJ 173 ***(foll)***
Gian Singh v. Devraj Nahar & Anor [1965] 2 MLJ 12 ***(foll)***
Manggai v. Government of Sarawak & Anor [1970] 2 MLJ 41 ***(foll)***
Mat Shah Mohamed & Anor v. Foo Say Meng & Ors [1983] 2 CLJ 194 ***(refd)***
Metal Industry Employees Union v. Registrar of Trade Unions & Ors [1976] 1 MLJ 220 ***(foll)***
Mohamed Hanifah v. PP [1956] 83 ***(refd)***
Ponnukon v. Jebaratnam [1980] 1 MLJ 282 ***(foll)***
Re Tan Ah Chuan & Anor [1954] MLJ 135 ***(refd)***
Shangara Singh v. PP [1967] 1 MLJ 15 ***(refd)***
Sykt Jengka Sdn Bhd v. Abdul Rashid Harun [1981] 1 MLJ 201 ***(refd)***

Legislation referred to:
Evidence Act 1950, ss. 32(1)(b), 74, 76, 77
Kelantan Land Settlement Ordinance 1955, ss. 10, 16(1)
National Land Code 1965, s. 343(1)(a)
Partnership Act 1961, ss. 22(1), 23, 24, 26

For the plaintiffs - Teo Poh Oon; M/s Teo & Chew
For the defendants - Wan Mahadzir Wan Daud; M/s Yusof Nor & Co

Reported by Cindy Chan

JUDGMENT

Idris Yusoff J:

In the amended statement of claim dated 21 November 1992 the plaintiffs pray for certain declarations:

(a) that the deceased Wong Yeow Wye owns 58/70 shares in Yuen Hing Rubber Plantation Company and all shares in the assets and properties which are yet to be divided and had been registered in the joint names of the deceased Wong Yeow Wye, deceased Mah Yok Lian and Wong Keng Giap are held on trust for Yuen Hing Rubber Plantation Company;

(b) the administrator Wong Keng Giap is to file a corrective affidavit with the court to include the following immovable properties:

(i) 357526/648717 undivided shares in Lot 1117 (GN 10623)

(ii) 357526/648717 undivided shares in Lot 888 (GN 10626)

(iii) 78179/201907 undivided shares in Lot 5 (GN 1369)

into the estate of the Wong Yeow Wye within 30 days from the date of the order and if he neglects/fails the senior assistant registrar of the High Court is given power to do so;

(c) that the following orders for distribution of the following properties under the Kelantan Land Settlement Ordinance No. 51/55 –

i) GN 15877 (actual GN No. is 15857) – Lot 1632

GN 15858 – Lot 1633

To	Share Proportions
Mah Yok Lian	119175 / 384483
Wong Keng Giap	86587 / 384483
Wong Thye Giap	11918 / 384483
Wong Sean Giap	11918 / 384483
Rizal Wong bin Abdullah @ Wong Heng Giap	11918 / 384483
Wong Sang Giap @ Wong Sang Yiap	11918 / 384483
Wong Sook Chu	11918 / 384483
Wong Soon Cheng	11917 / 384483
Wong Soon Pheng	11917 / 384483
Wong Soon Yuet	11917 / 384483
Wong Sow Geap	11917 / 384483

(ii) GN 15854 – Lot 1114

To	Share Proportions
Wong Keng Giap	5552 / 69492

(iii) GN 16221 – Lot 888

To	Share Proportions
Wong Keng Giap	38183 / 71701

(iv) GN 16220 – Lot 5

To	Share Proportions
Wong Yeow Wye	26060 / 201907
Mah Yok Lian	26060 / 201907
Wong Keng Giap	26059 / 201907

(v) GN 16224 – Lot 944
GN 16225 – Lot 1636

To	Share Proportions
Mah Yok Lian	59305 / 302584
Wong Keng Giap	65239 / 302584
Wong Thye Giap	5931 / 302584
Wong Sean Giap	5931 / 302584
Wong Heng Giap @ Rizal Wong bin Abdullah	5931 / 302584
Wong Seng Giap @ Wong Sang Yiap	5931 / 302584
Wong Sook Chu	5931 / 302584
Wong Soon Cheng	5931 / 302584
Wong Soon Pheng	5931 / 302584
Wong Soon Yuet	5931 / 302584
Wong Sow Geap	5931 / 302584

(the land settlement orders) are rendered null and void and the said properties are to be returned and registered again in the names of the late Wong Yeow Wye, the late Mah Yok Lian and Wong Keng Giap jointly and any other orders that the court deems fit.

At the outset of the hearing both parties indicated that they were not adducing any *viva voce* evidence but were purely relying on agreed documentary evidence and statement of agreed facts.

It will be observed that all the documents in the bundles of documents filed by both parties are agreed upon with the exception of one crucial document – item 02 in the plaintiffs' bundle – *viz* "Penyata Cukai" (Tax Statement) for the year ended 31 December 1962 of Yuen Hing Rubber Plantation Company, Pasir Puteh, Kelantan signed by the deceased Wong Yeow Wye as principal partner and submitted for tax purposes – see pp. 10 – 13 of the plaintiffs' bundle (hereinafter collectively called the "Trading Account"). In a letter to the 1st defendant dated 2 July 1998 the plaintiffs' solicitors argued that item 02 should have been agreed to as it constituted a public document. I shall discuss this issue later in the judgment.

From the agreed facts and the agreed documents the lands in dispute were originally registered under three titles namely 357526/648717 undivided shares in C.T.196, 177923/302584 undivided shares in CT. 45 and 78/79/201907 undivided shares GN No. 1369. The undivided shares in these three titles were registered in the joint names of deceased Wong Yeow Wye, his wife deceased Mah Yok Lian and Wong Keng Giap (1st defendant) without any specific share proportion being assigned to each of them.

C.T. 196 comprised three lots –

(i) Lot 886 – this lot number was changed to lot 1114 (GN 10620) (now GN 15854)

(ii) Lot 888 (GN 10626) (then changed to GN 16221)

(iii) Lot 890 – this lot was divided into 2 new lots –

(a) Lot 1117 (GN 10623) later was subdivided into two new lots namely Lot 1632 (GN 15857) and Lot 1633 (GN 15858) and

(b) Lot 1118 (GN 10624) later changed to GM 769.

C.T. 45 comprised two lots –

(a) Lot 942 (GN 14638) later changed to Lot 1636 (GN 16225)

(b) Lot 944 (GN 14639) later changed to GN 16224.

GN 1369 comprised three lots –

(a) Lot 5 (GN 1369) later changed to GN 16220

(b) Lot 847 (GN 14063)

(c) Lot 848 (GN 14064).

It will be further observed that there is a grant of Letters of Administration dated 24 September 1978 issued to Mah Yok Lian and Wong Keng Giap (1st defendant) as administrators for the due administration of the estate of Wong Yeow Wye (deceased), though for some obscure reasons, certain landed properties namely 357526/648717 undivided shares in Lot 1117 (GN 10623) and Lot 1118 (GN 10624), 3575/648717 undivided shares in lot 888 (GN 106267) and 78179/201907 undivided shares in Lot 5 (GN 1369) all in Mukim Padang Pa' Amat, Pasir Puteh are not included therein.

Sometime in March 1981 the Inquiry Officer under the Kelantan Land Settlement Ordinance 1955 held a series of enquiry under the said Ordinance relating to these lands and after due enquiries made certain orders concerning Wong Yeow Wye's 1/3 share in the joint ownership of these lands.

Be that as it may, the plaintiffs contend that all the landed properties though registered in three joint names, but in reality the purchase price was largely contributed by Wong Yeow Wye to the tune of $58,000 with Mah Yok Lian contributing $8,000 while the 1st defendant only put in $4,000.

This is evident as reflected in the Trading Account – hence, as further submitted by the plaintiff, Wong Yeow Wye's share in the properties should be 58/70 while Mah Yok Lian 8/70 and the 1st defendant 4/70.

Plaintiffs further submit that under s. 22 of the Partnership Act 1961 (the Act) these lands are to be regarded as partnership property and in particular, having regard to the grant of the Letters of Administration for the estate of Wong Yeow Wye whereby these lands are declared to be the assets of Yuen Hing Rubber Plantation Company with Mah Yok Lian and the 1st defendant as administrators. This, the plaintiffs say, is a clear indication that the lands belong to the partnership, in which event though they are registered in the three names jointly they are to be treated, pursuant to s. 24 of the Act, as between the partners (including the representatives of the deceased partner) and also as between the heirs of the deceased partner and his executors or administrators, as personal and not real estate and shall, therefore, devolve as such. The case of *Ashworth v. Munn* [1880] 15 Ch D 363 is qouted in support thereof. Plaintiff further maintain that by virtue of the proviso to s. 22(1) of the Act, upon the death of Wong Yeow Wye and Mah Yok Lian the legal estate devolves upon the surviving partner ie, the 1st defendant but subject to the equitable rights of the deceased's legal representatives.

It is common ground that "Yuen Hing Rubber Plantation Company" was registered under the Registration of Business Ordinance 1956 on 23 July 1959 as a partnership concern and it comprises three persons namely Wong Yeow Wye, Mah Yok Lian, and Wang Keng Giap.

a There is no written agreement as to the terms of the partnership and apparently there is no partnership property shown in the registration form – Form A – see p. 17 of the 1st defendant's bundle of documents. The three names were jointly registered in the respective land titles on 11 August 1962.

b The 1st defendant contends that since these lands as shown in the respective titles are registered in the joint names of Wong Yeow Wye, Mah Yok Lian and the 1st defendant they are entitled to undivided shares equally in consonance with s. 343(1)(a) of the National Land Code.

Section 22 of the Act reads:

c

> (1) All property and rights and interests in property originally brought into the partnership stock or acquired, whether by purchase or otherwise, on account of the firm or for the purposes and in the course of the partnership business, are called in this Act partnership property and must be held and applied by the partners exclusively for the purposes of the
> d partnership and in accordance with the partnership agreement.
>
> Provided that the legal estate or interest in any land which belongs to the partnership shall devolve according to the nature and tenure thereof and the general rules of law applicable thereto but in trust, so far as necessary, for the persons beneficially interested in the land under this
> e section.
>
> (2) Where co-owners of an estate or interest in any land, not being itself partnership property, are partners as to profits made by the use of that land, and purchase other land out of the profits to be used in like manner, the land so purchased belongs to them, in the absence of any agreement
> f to the contrary, not as partners, but as co-owners for the same respective estates and interests as are held by them in the land first mentioned at the date of the purchase.

Section 24 of the Act reads:

> g Where land or any interest therein has become partnership property, it shall, unless the contrary intention appears, be treated as between the partners (including the representatives of a deceased partner), and also as between the heirs of a deceased partner and his executors or administrators, as personal and not real estate.

h Section 22(1) deals with the partnership property – what constitutes partnership property, its application and devolution while s. 24 speaks of conversion into personal estate of land held as partnership property. It will be seen that the underlying principle in s. 24 is that *prima facie* the property of the partnership, unless there exists an agreement to the contrary, has to be sold on dissolution
i of partnership, though in equity it is deemed to have already been converted. Since it is only a conversion in equity the legal estate or interest devolves

according to the nature and tenure of the land and also the general rules applicable thereto but in trust so far as necessary for the persons beneficially interested thereof. In the case of *Mat Shah bin Mohamed & Anor. v. Foo Say Meng & Ors.* [1984] 1 MLJ 237, Wan Sulaiman FJ said at p. 239:

> On dissolution of a partnership all the properties of the firm, real and personal will have to be sold. Hence, in equity, it is deemed to have been already converted into personal estate and therefore devolves as such. If several partners are joint owners of a parcel of land then on the death of one the legal estate will devolve on the survivors subject to the equitable rights of the representatives of the deceased: *Wray v. Wray.* On the other hand, if the land is vested in one partner alone the legal estate will vest on his death on his personal representatives in trust for the other partners and the persons entitled to the deceased's estate according to the partnership agreement.

It will be noted that both ss. 22(1) and 24 specifically deal with **partnership property** and therefore what is of paramount importance to attract the application of these two sections is whether the lands can be construed and classified as "partnership property".

As indicated earlier when the partnership was registered there was no mention of the partnership property; it can therefore be safely assumed that there was nothing that was originally brought into the partnership stock and it will also appear that it was only during the continuance of the partnership, it had acquired, if at all it can be said that the partnership had acquired certain property, when the lands were registered in the joint names of the three persons. But even then it must be on account of the partnership if by purchase though I am not unmindful of s. 23 of the Act or that the acquisition was for the purposes or in the course of partnership business.

There must at least be evidence to this effect.

Generally speaking whether or not a property is partnership property or a property deemed to be partnership property depends on the intention of the partners which had to be determined on each individual case. The fact that a property used by all the partners for the partnership purposes need not necessarily qualify to be termed partnership property even though the partnership may be debited with the outgoings and expenses of the property unless there is evidence to show such an intention – see the decision of Privy Council in *Gian Singh v. Devraj Nahar & Anor.* [1965] 2 MLJ 12 affirming the decision of the Court of Appeal in *Devraj Nahar & Anor v. Gian Singh* [1963] MLJ 173 and see also *Ponnukon v. Jebaratnam* [1980] 1 MLJ 282 (FC) where Salleh Abas FJ (as he then was) said at p. 283:

> The law regarding partnership property may be stated as follows. The question whether a property is that of a partnership or a separate property of the respondent only depends upon whether there is an agreement (*Lindley on Partnership* [1971] 13th Ed. page 349) amongst the partners, express or implied, touching such property. In the absence of any such agreement, the question has to be resolved upon whether there is an intention of the partners to treat the property as a partnership property. If no such intention can be inferred, the property is the separate property of a partner although it may be used for, or even essential to, the partnership business and the partnership may even be debited with the outgoings and expenses of the property.

The only evidence which is strongly relied upon by the plaintiffs is the Trading Account which has not been agreed upon by the 1st defendant and hence would require sufficient proof. The plaintiffs claim that being a public document within the meaning of s. 74 of the Evidence Act 1950, it will therefore be relevant and admissible under s. 32(1)(b) of the said Act. The 1st defendant however disputes over the claim to categorise it as a public document.

Proceeding, however, on the premise that the Trading Account is a public document, this does not mean that it is readily relevant and admissible. Be it noted that the said s. 74 is not concerned with relevancy or admissibility – that question has to be decided with reference to other provisions of the Act. Being categorised as public document will, no doubt, facilitate its admissibility as evidence after satisfying and complying with certain prerequisites and the party concerned is not absolved from the need of furnishing the required evidence. A public document is merely an alternative to the production of original document.

Section 77 of the Evidence Act authorises the production of copies of public document in proof of the contents or parts of the contents of the document, on they being so certified in the manner set out in s. 76 of the Act. Section 76 of the Act says:

> Every public officer having the custody of a public document which any person has a right to inspect shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate, written at the foot of the copy, that it is a true copy of the document or part thereof, as the case may be, and the certificate shall be dated and subscribed by the officer with his name and his official title, and shall be sealed whenever the officer is authorised by law to make use of a seal, and the copies so certified shall be called certified copies.
>
> Explanation – any officer who by the ordinary course of official duty is authorized to deliver the copies shall be deemed to have the custody of the documents within the meaning of this section.

The Trading Account, no doubt, shows certain facts and figures but without any certificate or signature etc. as required by s. 76. See *In re Tan Ah Chuan & Anor*. [1954] MLJ 135 @ 140, *Mohamed Hanifah v. Public Prosecutor* [1956] 83 and *Shangara Singh v. Public Prosecutor* [1967] 1 MLJ 15. I, therefore, hold that in the circumstances, the Trading Account is not admissible.

As to its relevancy, s. 32(1) of the Evidence Act says:

> Statement, written or verbal, of relevant facts made by a person who is dead or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the court unreasonable, are themselves relevant facts in the following cases:
>
> (a) ...
>
> (b) when the statement was made by any such person in the ordinary course of business, and in particular when it consists of any entry or memorandum made by him in books kept in the ordinary course of business ... or signed by him;

Whilst it is true the statements in the Trading Account were made by deceased person, but there are other factors that required to be proved before the said account can be considered relevant. Of particular concern is the non-availability of evidence to show the statements were made in the ordinary course of business or parts of an entry in a memorandum or book kept in the ordinary course of business as to satisfy the requirements of s. 32(1)(b). See Federal Court decision in *Syarikat Jengka Sdn Bhd v. Abdul Rashid bin Harun* [1981] 1 MLJ 201 @ 203. From the aspect of Trading Account alone, since it is held inadmissible, there is insufficient evidence to support or suggest that the lands are "partnership property".

However, from the grant of Letters of Administration to the two administrators for the administration of the estate of Wong Yeow Wye there is included, amongst others, as asset **"1/3 share in Yuen Hing Rubber Plantation Co. as per Schedule A"** (bolds for emphasis). The inference to be drawn from such inclusion, to my mind, is that the petitioners acknowledged the lands belonged to Yuen Hing Rubber Plantation Company and hence could be treated as "partnership property" but to the extent of 1/3 share only. This was especially so when there was no partnership agreement ever executed between the three partners and having regard to s. 26 of the Act which says:

> The interests of partners in the partnership property, and their rights and duties in relation to the partnership, shall be determined, subject to any agreement, express or implied, between the partners, by the following rules:

(a) all the partners are entitled to share equally in the capital and profits of the business, and must contribute equally towards the losses, whether of capital or otherwise, sustained by the firm;

(b) ...

Indeed the petition for the grant of the said Letters of Administration was never objected to by all the beneficiaries and neither was there any objection when all of them appeared before the Enquiry Officer for the issue of various land settlement orders for distribution of Wong Yeow Wye 1/3 share in these lands. They could, if they were so mindful of exerting their rights have raised objection at least in regard to the share proportions of the properties to be distributed, and if there need be, proceeded to appeal to the District Officer under s. 16(1) of the Ordinance and subsequently to the High Court. And in cases where possessory titles were issued they could have taken steps under s. 10 of the Ordinance within the specified period. But they did not and instead filed a suit in the High Court seeking certain declarations. It is partly on this score that the 1st defendant resists the declarations arguing that by the plaintiffs' acts and conducts they should be refrained from pursuing this line of action.

The law is clear that the power of the court to make a binding declaration is discretionary and the court will not make a declaratory judgment where the question raised is purely academic or the declaration will be useless or embarrassing or where an adequate alternative remedy is available. See *Manggai v. Government of Sarawak & Anor* [1970] 2 MLJ 41 (FC) and at p. 44 Gill FJ (as he then was) said:

> It is well settled law that the court will not make a declaratory judgment where an adequate alternative remedy is available (see *Halsbury's Laws of England*, 3rd Edition, volume 22, page 749, paragraph 1611.

and in *Metal Industry Employees Union v. Registrar of Trade Unions & Ors.* [1976] 1 MLJ 220 the Federal Court again held that:

> the learned judge was right in declining to exercise his discretion to make the declarations as the statutory remedy of appeal better suited the case and would more satisfactorily dispose of the dispute;

One other issue that is being canvassed by the plaintiffs is that there is created a trust over these lands. In this respect my attention is drawn to the case of *Abdul Majeed v. Official Administrator*, F.M.S [1939] MLJ 267 where it was held that when one of the partners or even a third person had to be registered as the owner of the lands acquired by the partnership, there could be no doubt that partner or a third person would be an express trustee of the partnership. In fact this principle had already been elucidated by Wan Sulaiman, FJ in *Mat*

Shah case *(supra).* In *Ab Majeed's* case the learned judge held that the lands though acquired by the partnership, could not be registered in the partnership name under the law and the lands were therefore registered in the name of one of the partners. In the present suit there is no evidence of similar effect but as pointed out earlier, the plaintiffs anchor their claims on the proviso to s. 22 of the Act. Thus even though the lands are vested in the 1st defendant, in law he holds them in trust for the estate of Wong Yuen Wye in whatever proportion due to the latter. In effect that is what actually happened – a 1/3 share in the lands is treated as Wong Yuen Wye asset, considering the absence of any evidence to the contrary and the inadmissibility of the Trading Account. The said 1/3 share had been properly and legally distributed to the rightful beneficiaries.

For reasons stated above I refuse to grant the declarations sought for and accordingly dismiss the suit with costs.

a

b

This page is intentionally left blank

c

d

e

f

g

h

i